

AMENDED IN SENATE AUGUST 27, 2015

AMENDED IN SENATE JULY 16, 2015

AMENDED IN SENATE JUNE 25, 2015

AMENDED IN ASSEMBLY APRIL 30, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1431

Introduced by Assembly Member Gomez
(Coauthors: Assembly Members Cooper, Gonzalez, and
Roger Hernández)
(Coauthor: Senator Hertzberg)

February 27, 2015

An act to amend Section 20919.15 of, and to add and repeal Article 60.4 (commencing with Section 20919.20) ~~of, of~~ Chapter 1 of Part 3 of Division 2 ~~of of~~, the Public Contract Code, relating to local public contracting.

LEGISLATIVE COUNSEL'S DIGEST

AB 1431, as amended, Gomez. Local Agency Public Construction Act: job order contracting.

Existing law, the Local Agency Public Construction Act, authorizes job order contracting, as provided, by the Los Angeles Unified School District (LAUSD), until December 31, 2020.

This bill would repeal the provisions relating to the LAUSD and would instead authorize job order contracting in a similar manner for school districts until January 1, 2022. The bill would restrict job order

contracting pursuant to the bill to school districts that have entered into a project labor agreement or agreements, as defined, that will apply to all public works in excess of \$25,000 undertaken by the school district through at least December 31, 2021, regardless of what contracting procedure is used to award that work. The bill would require job order contractors to submit a questionnaire to the school district containing specified information verified under oath. By expanding the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 20919.15 of the Public Contract Code is
2 amended to read:

3 20919.15. This article shall remain in effect only until January
4 1, 2016, and as of that date is repealed, unless a later enacted
5 statute, that is enacted before January 1, 2016, deletes or extends
6 that date.

7 SEC. 2. Article 60.4 (commencing with Section 20919.20) is
8 added to Chapter 1 of Part 3 of Division 2 of the Public Contract
9 Code, to read:

10

11 Article 60.4. Job Order Contracting for School Districts

12

13 20919.20. The Legislature finds and declares all of the
14 following:

15 (a) It is the intent of the Legislature, in enacting this article, to
16 demonstrate an alternative and optional procedure for bidding of
17 public works projects that is applicable only to school districts
18 ~~other than the Los Angeles Unified School District.~~ *districts.* The
19 Legislature has previously authorized the use of this alternative
20 and optional procedure in ~~Article 60.3 (commencing with Section~~
21 ~~20219) only for the Los Angeles Unified School District, which~~

1 is using the procedure in conjunction with its project stabilization
2 agreement.

3 (b) Districts should be able to utilize cost-effective options for
4 the delivery of public works projects, in accordance with the
5 national trend, which include authorizations in California, to allow
6 public entities to utilize job order contracts as a project delivery
7 method.

8 (c) The benefits of a job order contract project delivery system
9 include accelerated completion of the projects, cost savings, and
10 reduction of construction contracting complexity for the unified
11 school district.

12 (d) The job order contracting approach should be used for the
13 purposes of reducing project cost and expediting project
14 completion.

15 ~~(e) The Legislature is uncertain of the benefits and advantages~~
16 ~~of job order contracting for California school districts and therefore~~
17 ~~looks forward to the reports required by Section 20919.32 in order~~
18 ~~to fully and competently assess any further exemptions to the~~
19 ~~school contracting process.~~

20 ~~(f)~~

21 (e) The availability of job order contracting as a project delivery
22 method will not preclude the use of traditional methods of project
23 delivery if a traditional method results in higher cost savings.

24 ~~(g)~~

25 (f) It is the intent of the Legislature that job order contracts be
26 competitively bid and awarded to the bidders providing the most
27 qualified responsive bids. It is further the intent of the Legislature
28 that school districts use the job order contract process pursuant to
29 this article only if the school district has entered into a project
30 labor agreement that meets the requirements of Section 2500 for
31 all its public works projects.

32 20919.21. As used in this chapter:

33 (a) “Adjustment factor” means the job order contractor’s
34 competitively bid adjustment to the school district’s prices as
35 published in the unit price catalog.

36 (b) “Indefinite quantity” means one or more of the construction
37 tasks listed in the unit price catalog.

38 (c) “Job order” means a firm, fixed priced, lump-sum order
39 issued by the school district to a job order contractor for a definite

1 project scope of work as compiled from the unit price catalog to
2 be performed pursuant to a job order contract.

3 (d) “Job order contract” means a contract, awarded to a most
4 qualified bidder as described in paragraph (1) of subdivision (b)
5 of Section 20919.24, between the school district and a licensed,
6 bonded, and general liability insured contractor in which the
7 contractor agrees to a fixed period, fixed-unit price, and indefinite
8 quantity contract that provides for the use of job orders for public
9 works or maintenance projects.

10 (e) “Job order contract technical specifications” means a book,
11 published by the school district, detailing the technical
12 specifications with regard to quality of materials and workmanship
13 to be used by the job order contractor in accomplishing the tasks
14 listed in the unit price catalog.

15 (f) “Job order contractor” means a licensed, bonded, and general
16 liability insured contractor awarded a job order contract.

17 (g) “Offer to perform work” means the job order contractor’s
18 proposal for a specific job order.

19 (h) “Plans and specifications” means the unit price catalog and
20 the job order contract technical specifications. The scope of work
21 to be performed with a job order contract is potentially, but not
22 necessarily, all the tasks published in the unit price catalog.

23 (i) “Project” means the specific requirements and work to be
24 accomplished by the job order contractor in connection with an
25 individual job order.

26 (j) “Project labor agreement” means an agreement that meets
27 the requirements of Section 2500.

28 (k) “Project scope of work” means the document and related
29 drawings, specifications, and writings referenced therein which
30 together set forth the specific requirements and work to be
31 accomplished by the job order contractor in connection with an
32 individual job order.

33 (l) “Proposal” means the job order contractor prepared document
34 quoting those construction tasks listed in the unit price catalog that
35 the job order contractor requires to complete the project scope of
36 work, together with the appropriate quantities of each task. The
37 pricing of each task shall be accomplished by multiplying the
38 construction task unit price by the proposed quantity and the
39 contractor’s competitively bid adjustment factor. The proposal
40 shall also contain a schedule for the completion of a specific project

1 scope of work as requested by the school district. The proposal
2 may also contain approved drawings, work schedule, permits, or
3 other documentation as the school district may require for a specific
4 job order.

5 (m) “Public works” has the same meaning as in Chapter 1
6 (commencing with Section 1720) of Part 7 of Division 2 of the
7 Labor Code.

8 (n) “Public works project” has the same meaning as “public
9 project,” as defined in Section 22002.

10 (o) “Subcontractor” means any person, firm, or corporation,
11 other than the employees of the job order contractor, who is bonded
12 and general liability insured and who contracts to furnish labor,
13 or labor and materials, at the worksite or in connection with a job
14 order, whether directly or indirectly on behalf of the job order
15 contractor.

16 (p) “School district” means any school district.

17 (q) “Unit price catalog” means a book containing specific
18 construction tasks and the unit prices to install or demolish that
19 construction. The listed tasks shall be based on generally accepted
20 industry standards and information, where available, for various
21 items of work to be performed by the job order contractor. The
22 prices shall include the cost of materials, labor, and equipment for
23 performing the items of work. The prices shall not include overhead
24 and profit. All unit prices shall be developed using local prevailing
25 wages.

26 20919.22. Provisions in this article only apply to school districts
27 that choose to utilize job order contracting. A school district may
28 utilize job order contracting, when permitted by this article, as an
29 alternative to any contracting procedures that the school district
30 is otherwise authorized or required by law to use.

31 20919.23. (a) The school district may utilize job order
32 contracting pursuant to this article only if the school district has
33 entered into a project labor agreement or agreements that will apply
34 to all public works in excess of twenty-five thousand dollars
35 (\$25,000) undertaken by the school district through at least
36 December 31, 2021, regardless of what contracting procedure is
37 used to award that work.

38 (b) The school district shall prepare an execution plan for all
39 modernization projects that may be eligible for job order
40 contracting pursuant to this article. The school district shall select

1 from that plan a sufficient number of projects to be initiated as job
2 order contracts during each calendar year and shall determine for
3 each selected project that job order contracting will reduce the
4 total cost of that project. Job order contracting shall not be used if
5 the school district finds that it will increase the total cost of the
6 project.

7 20919.24. Bidding for job order contracts shall progress as
8 follows:

9 (a) (1) The school district shall prepare a set of documents for
10 job order contracts. The documents shall include a unit price
11 catalog and preestablished unit prices, job order contract technical
12 specifications, and any other information deemed necessary to
13 describe adequately the school district's needs.

14 (2) Any architect, engineer, or consultant retained by the school
15 district to assist in the development of the job order contract
16 documents shall not be eligible to participate in the preparation of
17 a bid with any job order contractor.

18 (b) Based on the documents prepared under subdivision (a), the
19 school district shall prepare a request for bid that invites
20 prequalified job order contractors to submit competitive sealed
21 bids in the manner prescribed by the school district.

22 (1) (A) The prequalified job order contractors, as determined
23 by the school district, shall bid one or more adjustment factors to
24 the unit prices listed in the unit price catalog based on the job order
25 contract technical specifications. Awards shall be made to the
26 prequalified bidders that the school district determines to be the
27 most qualified based upon preestablished criteria made by the
28 school district. The prequalified bidders must be in compliance
29 with the school district's project labor agreement.

30 (B) Compliance shall constitute no more than three major
31 violations on any school district projects within the last three years.
32 If a contractor has more than three violations within a three-year
33 period of time, the school district shall seek administrative review
34 of the violations. Violations will include, but are not limited to,
35 the following:

36 (i) Failure to register core workers with the appropriate building
37 trade union.

38 (ii) Failure to assign apprentices in accordance with Section
39 1777.5 of the Labor Code.

40 (iii) Failure to comply with subdivision (c) of Section 20919.25.

1 (iv) Incorrect assignment of work in accordance with the school
2 district's project labor agreement.

3 (2) The school district may award multiple job order contracts
4 through a request for bid. Job order contracts shall be awarded to
5 the most qualified prequalified bidders described in this
6 subdivision.

7 (3) The request for bids may encourage the participation of local
8 construction firms and the use of local subcontractors.

9 (c) (1) The school district shall establish a procedure to
10 prequalify job order contractors using a standard questionnaire
11 that includes, at a minimum, the issues covered by the standardized
12 questionnaire and model guidelines for rating bidders developed
13 by the Department of Industrial Relations pursuant to subdivision
14 (a) of Section 20101. This questionnaire shall require information
15 including, but not limited to, all of the following:

16 (A) If the job order contractor is a partnership, limited
17 partnership, or other association, a listing of all of the partners or
18 association members known at the time of bid submission who
19 will participate in the job order contract.

20 (B) Evidence that the members of the job order contractor have
21 the capacity to complete projects of similar size, scope, or
22 complexity, and that proposed key personnel have sufficient
23 experience and training to competently manage the construction
24 of the project, as well as a financial statement that assures the
25 school district that the job order contractor has the capacity to
26 complete the project.

27 (C) The licenses, registration, and credentials required to
28 perform construction, including, but not limited to, information
29 on the revocation or suspension of any license, credential, or
30 registration.

31 (D) Evidence that establishes that the job order contractor has
32 the capacity to obtain all required payment and performance
33 bonding and liability insurance.

34 (E) Information concerning workers' compensation experience
35 history, worker safety programs, and apprenticeship programs.

36 (F) A full disclosure regarding all of the following that are
37 applicable:

38 (i) Any serious or willful violation of Part 1 (commencing with
39 Section 6300) of Division 5 of the Labor Code or the federal

1 Occupational Safety and Health Act of 1970 (Public Law 91-596),
2 settled against any member of the job order contractor.

3 (ii) Any debarment, disqualification, or removal from a federal,
4 state, or local government public works project.

5 (iii) Any instance where the job order contractor, or its owners,
6 officers, or managing employees submitted a bid on a public works
7 project and were found to be nonresponsive, or were found by an
8 awarding body not to be a responsible bidder.

9 (iv) Any instance where the job order contractor, or its owners,
10 officers, or managing employees defaulted on a construction
11 contract.

12 (v) Any violations of the Contractors' State License Law
13 (Chapter 9 (commencing with Section 7000) of Division 3 of the
14 Business and Professions Code), excluding alleged violations of
15 federal or state law regarding the payment of wages, benefits,
16 apprenticeship requirements, or personal income tax withholding,
17 or of Federal Insurance Contribution Act (FICA) withholding
18 requirements settled against any member of the job order
19 contractor.

20 (vi) Any bankruptcy or receivership of any member of the job
21 order contractor, including, but not limited to, information
22 concerning any work completed by a surety.

23 (vii) Any settled adverse claims, disputes, or lawsuits between
24 the owner of a public works project and any member of the job
25 order contractor during the five years preceding submission of a
26 bid under this article, in which the claim, settlement, or judgment
27 exceeds fifty thousand dollars (\$50,000). Information shall also
28 be provided concerning any work completed by a surety during
29 this period.

30 (G) In the case of a partnership or any association that is not a
31 legal entity, a copy of the agreement creating the partnership or
32 association and specifying that all partners or association members
33 agree to be fully liable for the performance under the job order
34 contract.

35 (2) The information required under this subdivision shall be
36 verified under oath by the entity and its members in the manner
37 in which civil pleadings in civil actions are verified. Information
38 that is not a public record under the California Public Records Act
39 (Chapter 3.5 (commencing with Section 6250) of Division 7 of

1 Title 1 of the Government Code) shall not be open to public
2 inspection.

3 20919.25. (a) The maximum total dollar amount that may be
4 awarded under a single job order contract shall not exceed five
5 million dollars (\$5,000,000) in the first term of the job order
6 contract and, if extended or renewed pursuant to subdivision (b),
7 a maximum of ten million dollars (\$10,000,000) over the
8 subsequent two terms of the job order contract.

9 (b) Job order contracts may be executed for an initial contract
10 term of no more than 12 months, with the option of extending or
11 renewing the job order contract for two 12-month periods. The
12 term of the job order contract shall be for the contract term or
13 whenever the maximum value of the contract is achieved,
14 whichever is less. All extensions or renewals shall be priced as
15 provided in the request for bids. The extension or renewal shall
16 be mutually agreed to by the school district and the job order
17 contractor.

18 (c) The school district may issue job orders to the job order
19 contractor that has been awarded the job order contract. The job
20 order issued to the job order contractor shall not commence for
21 seven days from the time the job order was issued and the job order
22 contractor shall provide a minimum of seven days' notice for the
23 addition of any subcontractor or substitution of any subcontractor
24 as described in subdivision (e) of Section 20919.26. The job order
25 shall be based on a project scope of work prepared by the school
26 district as well as a proposal from the job order contractor who is
27 awarded the job order contract. No single job order may exceed
28 one million dollars (\$1,000,000).

29 (d) The amounts specified in subdivisions (a) and (c) shall be
30 adjusted on January 1, 2016, as if this section was operative
31 beginning January 1, 2004, to reflect the percentage change in the
32 California Consumer Price Index, and shall be adjusted each
33 January 1 thereafter to reflect the percentage change in the
34 California Consumer Price Index.

35 (e) It is unlawful to split or separate into smaller job orders any
36 project for the purpose of evading the cost limitation provisions
37 of this chapter.

38 (f) All work performed under the job order contract shall be
39 covered by a project labor agreement.

1 (g) Any change or alteration to a job order shall be in compliance
2 with Section 20118.4.

3 20919.26. (a) All work bid under the job order contract shall
4 comply with Chapter 4 (commencing with Section 4100) of Part
5 1 and is subject to all of the penalties and provisions set forth in
6 that chapter.

7 (b) For purposes of this article, if the primary job order
8 contractor chooses to use subcontractors, the primary job order
9 contractor is required to verify that the subcontractors possess the
10 appropriate licenses and credentials required to perform
11 construction.

12 (c) Notwithstanding subdivision (a), the primary job order
13 contractor may use subcontractors that are not listed at the time
14 the job order is issued if the work to be performed under that job
15 order is less than ten thousand dollars (\$10,000).

16 (d) If the primary job order contractor chooses to use a
17 subcontractor that is not listed at the time of bid to perform work
18 on a job order, all of the following apply:

19 (1) The primary job order contractor shall provide public notice
20 of the availability of work to be subcontracted by trade. The public
21 notice shall include the scope of work; the project location; the
22 name, address, and the telephone number of the primary job order
23 contractor; and the closing date, time, and location for sealed bids
24 to be submitted.

25 (2) The primary job order contractor shall take sealed bids from
26 the subcontractors solicited for the proposal. These bids shall be
27 publicly opened at a prescribed time and place by the primary job
28 order contractor. After the bids are opened, the job order contractor
29 shall notify the school district which subcontractor was selected.

30 (3) The notification shall include every subcontractor for all
31 tiers and must establish the authorized subcontractor list for the
32 job order. Work shall not commence prior to seven days' notice
33 of the established subcontractor list and the subsequent addition
34 of any subcontractor to the job order.

35 (4) The notification shall identify the scope of the work to be
36 performed by each subcontractor to the job order, broken down
37 by craft. If a subcontractor performs multiple crafts, the job order
38 contractor shall identify the work of each craft to be performed.

39 (e) If the primary job order contractor chooses to make a
40 substitution to the subcontractor list, the primary job order

1 contractor shall provide a minimum of seven days' notice to the
2 school district along with justification as to the need for the
3 substitution. The school district may request a hearing to evaluate
4 the substitution request, which shall be in accordance with Chapter
5 4 (commencing with Section 4100) of Part 1.

6 (f) If the school district determines that there has been a violation
7 of Chapter 4 (commencing with Section 4100) of Part 1, including
8 bid shopping by the primary job order contractor, the school district
9 may terminate the job order or the contractor may lose
10 authorization to proceed with awarded work subject to the school
11 district's administrative due process review, if such review is
12 established pursuant to the school district's project labor agreement.
13 If the school district determines that a job order contractor has
14 violated any provision set forth in Chapter 4 (commencing with
15 Section 4100) of Part 1, the school district may declare the
16 contractor ineligible for future job orders and may result in a loss
17 of prequalification status for a period of time to be determined by
18 the school district.

19 20919.27. (a) A job order contract shall set forth in the general
20 conditions of the job order contract the party or parties responsible
21 for seeing that the provisions of Article 2 (commencing with
22 Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor
23 Code are complied with.

24 (b) For purposes of job order contracting, prevailing wages
25 when required to be paid shall apply to all work ordered under the
26 job order contract regardless of thresholds set forth in Section
27 1771.5 of the Labor Code.

28 (c) The job order contractor shall pay the prevailing wage in
29 effect at the time the job order is issued by the school district and
30 all increases as published by the Department of Industrial Relations
31 for the term of the job order contract, including all overtime,
32 holiday, and shift provisions published by the Department of
33 Industrial Relations.

34 (d) The school district shall designate one individual to act as
35 a monitor to inspect job sites for labor compliance violations at
36 the request of the designated labor representative in its project
37 labor agreement.

38 20919.28. A willful violation of Section 20919.26 occurs when
39 the job order contractor or subcontractor knew or reasonably should
40 have known of his or her obligations under the public works law

1 and deliberately fails or refuses to comply with its provisions. The
2 school district using job order contracting shall publish and
3 distribute to the Labor Commissioner a list of all job order
4 contractors or subcontractors who violate this provision and the
5 school district shall not award a job order contract or any future
6 job orders under an existing job order contract to any contractor
7 or subcontractor who violates this provision during the effective
8 period of debarment of the contractor or subcontractor.

9 20919.29. For purposes of employment of apprentices on job
10 order contracts, when the individual job order involves more than
11 thirty thousand dollars (\$30,000) or 20 working days, all general
12 contractors or subcontractors shall at all times be in compliance
13 with Section 1777.5 of the Labor Code and shall comply with the
14 following:

15 (a) Prior to commencing work on an individual job order, every
16 contractor shall submit job order award information to an
17 applicable apprenticeship program that can supply apprentices to
18 the site of the job order. The information submitted shall include
19 an estimate of the journeyman hours to be performed under the
20 contract, the number of apprenticeships proposed to be employed,
21 and the approximate dates the apprentices would be employed. A
22 copy of this information shall also be submitted to the awarding
23 agency if requested by the awarding agency.

24 (b) The ratio of work performed by apprentices to journeymen
25 employed in a particular craft or trade on the job order may be no
26 higher than the ratio stipulated in the apprenticeship standard under
27 which the apprenticeship program operates where the job order
28 contractor agrees to be bound by those standards but, except as
29 otherwise provided in Section 1777.5 of the Labor Code, in no
30 case shall the ratio be less than one hour of apprenticeship work
31 for every five hours of journeyman work.

32 (c) Every apprentice employed under the job order contract shall
33 be paid the prevailing rate of per diem wages for apprentices in
34 the trade to which he or she is registered and shall be employed
35 only at the work of the craft or trade to which he or she is
36 registered.

37 (d) Every apprentice employed under the job order contract
38 shall be hired from the local joint labor management apprenticeship
39 committee that has jurisdiction in the geographic area of the
40 project.

1 20919.30. A job order contractor or subcontractor that
2 knowingly violates the provisions involving employment of
3 apprentices shall forfeit as a civil penalty an amount not exceeding
4 one hundred dollars (\$100) for each full calendar day of
5 noncompliance. The amount of this penalty shall be based on
6 consideration of whether the violation was a good faith mistake
7 due to inadvertence. A contractor or subcontractor that knowingly
8 commits a second or subsequent violation of the provisions
9 involving employment of apprentices within a three-year period
10 where the noncompliance results in apprenticeship training not
11 being provided as required, shall forfeit as a civil penalty a sum
12 of not more than three hundred dollars (\$300) for each full calendar
13 day of noncompliance and shall not be awarded any further job
14 orders under the job order contract and shall be precluded for a
15 period of one year from bidding on any future job order contracts.

16 20919.31. In order to prevent fraud, waste, and abuse, the
17 school district adopting job order contracting shall do all of the
18 following:

19 (a) Prepare for each individual job order developed under a job
20 order contract an independent school district estimate. The estimate
21 will be prepared prior to the receipt of the contractor's offer to
22 perform work and will be compared to the contractor's proposed
23 price to determine the reasonableness of that price before issuance
24 of any job order. The basis for any adjustments to the school district
25 estimate is to be documented. In the event that the contractor's
26 proposal for a given job order is found to be unreasonable, not cost
27 effective, or undesirable, the school district is under no obligation
28 to issue the job order to the job order contractor, and may instead
29 utilize any other available procurement procedures.

30 (b) The school district shall not issue a job order until the job
31 order has been reviewed and approved by the appropriate level of
32 management.

33 (c) Once a job order has been issued, all documents pertaining
34 to preparation and approval of the job order, including the
35 independent school district estimate, shall be available for public
36 review.

37 20919.32. A school district that adopts the job order contracting
38 process shall also adopt a payment resolution process which may
39 include, but not be limited to, the convening of a payment
40 resolution committee.

1 20919.33. This article shall remain in effect only until January
2 1, 2022, and as of that date is repealed, unless a later enacted
3 statute, that is enacted before January 1, 2022, deletes or extends
4 that date.

5 SEC. 3. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.